

United States District Court  
Eastern District of California

Vernon Wayne McNeal,

Plaintiff,

vs.

Evert, et al.,

Defendants.

No. Civ. S 05-0441 GEB PAN P

Order

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March 10, 2005, the court ordered plaintiff to show cause why in forma pauperis status should not be denied for his failure to exhaust administrative remedies.

March 28, 2005, plaintiff responded, submitting evidence his administrative remedies were exhausted March 8, 2005.

Plaintiff requests leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915 and has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Plaintiff is required to pay the statutory filing fee of \$250 for this action.

1 28 U.S.C. §§ 1914(a), 1915(b)(1). Plaintiff is obligated for  
2 monthly payments of 20 percent of the preceding month's income  
3 credited to plaintiff's prison trust account. These payments  
4 will be forwarded by the appropriate agency to the Clerk of the  
5 Court each time the amount in plaintiff's account exceeds \$10,  
6 until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

7 April 13, 2005, plaintiff requested leave to amend his  
8 pleading. Plaintiff may amend once as of right where no  
9 defendant has served an answer.

10 Accordingly, the court hereby orders that:

11 1. Plaintiff's request for leave to proceed in forma  
12 pauperis is granted and the complaint is deemed filed the date of  
13 this order.<sup>1</sup>

14 2. Plaintiff is obligated to pay the statutory filing fee  
15 of \$250 for this action. The fee shall be collected in  
16 accordance with this court's notice to the Director of the  
17 California Department of Corrections filed concurrently herewith.

18 3. Plaintiff may amend his pleading within 20 days. If he  
19 does not the court will screen the complaint under 28 U.S.C.  
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23 <sup>1</sup> Section 1915(a)(1) requires plaintiff seek an order authorizing  
24 "commencement" of a suit in forma pauperis. "Bringing" and "commencing" suit  
25 are the same thing. Black's Law Dictionary, Rev'd. 4th ed. (1968) p. 335 ("To  
26 'bring' a suit is an equivalent term; an action is 'commenced' when it is  
'brought' and vice versa.") Therefore, this action "commences" when the court  
grants plaintiff authority to proceed in forma pauperis; the complaint is  
deemed to have been filed with the court on that date. See Fed. R. Civ. P. 3  
("A civil action is commenced by filing a complaint.")

1 § 1915A(b) and determine whether service is appropriate, and on  
2 which defendants.

3 Dated: April 26, 2005.

4 /s/ Peter A. Nowinski

5 PETER A. NOWINSKI

6 Magistrate Judge  
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